

Christine Joyce

4/25

(10)

From: Dore' Hunter
Sent: Thursday, April 21, 2005 9:44 AM
To: Board of Selectmen
Cc: Manager Department; Life After NESWC Committee; Planning Board; Finance Committee
Subject: Anticipated discussion at 4/25 BOS Meeting re Home Depot Proposal

Hi Folks,

I write this email intending to provide you some advance notice of a significant 4/25 Board of Selectmen Meeting Agenda item concerning the "Home Depot proposal" (hereinafter "HDp") and the general sense of the facts and opinions I expect that I will offer under that item during next Monday night's meeting.

I do not intend to start an outside the meeting debate and thus am not seeking nor do I expect any responses to this message from any of the addressees outside of the public meetings. But I do want to give you, the Selectmen, an opportunity in advance to think about what I may say Monday night, and to apprise others who might as a result wish to attend the Monday meeting some notice of my intentions. I will make this email memo part of the Monday night meeting record.

Basically I intend to propose that the Board of Selectmen determine on Monday night whether it wishes to continue to press forward toward an eventual decision on whether it might possibly be willing to recommend Town Meeting adoption of the HDp, or some variant of it, after further fact gathering processes, or whether the Board wishes to reject the proposal at this point without any further proceedings. Pending the anticipated discussion I am presently inclined toward the latter view.

As you know, the Board some years ago agreed with the staff proposal that the Town maintain a "low profile" re the question as to whether or not some further capping of the landfill would be required by the DEP. We were aware that the landfill closure regulations became more stringent not long after we stopped dumping trash in the landfill and spread an earthen layer over it. We are also aware that there is some subsurface leachate flow emanating from the fill area. Still further it had been our experience that DEP was not loath to impose sizable fines without warning, as occurred re the waste oil collection process at the Transfer Station. Accordingly staff has for years been concerned that we might find ourselves rather suddenly facing a DEP order to spread a membrane over the landfill, and thus be required to make what might be a multi million dollar expenditure under the threat of significant enforcement action. Therefore, while maintaining a "low profile" (one aspect of which was not discussing the matter further with DEP) we built up the NESWC Enterprise Fund, in part, to have the wherewithal for recapping the landfill should we receive such an order.

The LAN Committee's RFPs, in part, assumed that the landfill both had potential for significant commercial development which might help reverse the decline of the commercial portion of the tax base and that the landfill cap presently in place would eventually have to be redone, and sought outside parties who might be interested in taking over the premises and accomplishing both objectives. In theory it sounded to me like a reasonable exploration to undertake. However, the potential results, the HDp, and what might reasonably flow from its adoption, in my mind pose large scale potential changes in the character of Acton that I don't think are worth the cost. And a major portion of the underlying rationale, insofar as regards the landfill cap, has been called into serious question.

There is little doubt that the HDp is quite controversial. I presume there are at least a few folks who, along the lines of many persons who have in the past spoken in favor of steps to enhance the commercial portion of the property tax base, will come forward to support the HDp. However, my sense is that even among those who have indicated support for enhanced commercial development there are many who oppose the HDp as the unwelcome potential first step toward a possible "Route 9" retail sprawl along Route 2. It is quite clear that there is an articulate and growing group of citizens who are organizing and will lobby against the HDp for a multitude of professed reasons, some of which seem to me to be well taken. The LAN Committee has already recognized that there is sufficient controversy to recommend postponement of a submission of the HDp to a Town Meeting for almost a year, which the Board has approved.

4/21/2005

At the same time one of the most compelling rationales for the HDp, laying off the anticipated costs of a new landfill cap on a third party, seems to have evaporated. Through the efforts of Acton resident James Connelly in having multiple personal conversations with a responsible DEP official, followed up and expanded upon by Town staff last week, it appears that we may not have to rework the landfill cap. The apparently responsible DEP official is verbally saying that DEP is satisfied with the current landfill cap and finds the existing subsurface leachate to be normal for such a closed landfill and of little concern. It is my understanding that this is against a background where the DEP records concerning our landfill, and others, are in some disarray and various references have been made to a relevant 1992 letter of which neither the Town nor DEP can a copy. Although this news is quite positive, it has been my experience in Federal government that agencies with regulatory and enforcement powers have been known to change their corporate mind and, of course, are not bound by prior verbal, or perhaps even written, pronouncements of their employees. I personally will not consider the matter of whether or not, absent any new use of the landfill area, the landfill cap needs to be reworked to be finally determined until we at least have something in writing from the DEP in that regard. My understanding is that currently the DEP is declining to issue such a writing. But I understand that the Town Manager will, at a different time, discuss a potential strategy for obtaining a written confirmation that no expensive further work is needed.

When and if such an assurance is received we can then consider what proposals should be made in regard to the investment and/or use of the monies accumulated in the expectation of having to recap. [Some weeks ago the ALG consensus was that the potential large one time asset that those funds might represent, if and when freed up, should not merely be poured into current budgets - in any case Town Meeting action would be needed to transfer monies out of the Enterprise Fund, and then again as to the eventual disposition.]

Against this background it seems to me prudent to determine at this point whether the Board now considers it worthwhile to continue, over potentially the next year, to continue to expend staff and Board/Committee time and resources to further consider the HDp, or whether the Board now wishes to terminate this process.

Regards,
Dore' Hunter
Selectman, Town of Acton, MA
Tel: 978-263-0882
Fax: 978-263-9230
www.dorehunter.com
Email: DoreHunter@aol.com